IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
FIRST APPEAL No 4145 of 2001
with
Civil Application No.10095 of 2001
with
Civil Revision Application No.274 of 2003_

For Approval and Signature:
Hon'ble MR.JUSTICE M.H.KADRI
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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW INDIA ASSURANCE CO. LTD.

Versus

AHMEDABAD ABDULRAHMANBHAI POTHIGARA

Appearance:
1. First Appeal No. 4145 of 2001
MR SANDIP C SHAH for Petitioner No. 1
MR LM CHHABLANI for Respondent No. 1
RULE SERVED for Respondent No. 2
2. Civil Application No.10095 of 2001
MR SANDIP C SHAH for Petitioner No. 1
MR LM CHHABLANI for Respondent No. 1
RULE SERVED for Respondent No. 2
3 Civil Revision Application No.274 of 2003
MR SANDIP C SHAH for Petitioner No. 1
MR LM CHHABLANI for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 07/08/2003

COMMON ORAL JUDGEMENT

1. The New India Assurance Company Limited, by filing First Appeal No.4145 of 2001, has challenged the common judgment and order dated April 10, 2001, passed by the Motor Accidents Claims Tribunal (Aux.), Mehsana, in

M.A.C.P. Nos.1120 of 1989 and 1121 of 1989. By the said common judgment and order, the Tribunal has awarded Rs.20,000/- to Ahemadbhai Abdulrahemanbhai Pothigara (respondent No.1 in First appeal No.4145 of 2001) and Rs.1,200/- to Jenabbibi Ahmadbhai Pothigara (respondent No.1 in Civil Revision Application No.274 of 2003) as compensation.

2. Civil Revision Application, which was dismissed for non-prosecution, is ordered to be restored on file. Civil Revision Application is filed by the New India Assurance Company Limited challenging the aforesaid judgment and order awarding Rs.1200 to Jenabbibi Ahmadbhai Pothigara (respondent No.1) as compensation. Learned advocate, Mr.Sandip C. Shah, seeks permission to delete respondent No.2 (owner-cum-driver of the auto-rickshaw) from the record of the Civil Revision Application. Permission is granted. The respondent No.2 (owner-cum-driver of the auto-rickshaw) stands deleted from the record of the Civil Revision Application. Amendment be carried out forthwith. Learned advocate, Mr. L.M. Chhablani, undertakes to file vakalatnama on behalf of the respondent No.1. Hence, Rule. Learned advocate, Mr. L.M. Chhablani, waives service of rule on behalf of the respondent No.1.

3. As common question of facts and law arise for my consideration, I propose to dispose of the First Appeal and the Civil Revision Application by this common order.

First Appeal No.4145 of 2001

4. Ahemadbhai Abdulrahemanbhai Pothigara (respondent No.1 in First appeal No.4145 of 2001) Jenabbibi Ahmadbhai Pothigara (respondent No.1 in Civil Revision Application) were passengers in the auto-rickshaw bearing No.GRN 1879. The accident of the said auto-rickshaw had taken place at 5.30 p.m. on December 31,1988 on Vijapur-Mehsana Highway, near the sim of village Devarasan. At the relevant time, the respondent No.1, along with his wife and mother, was travelling in the said rickshaw and was going from Himmatnagar to the holy place of Miradatar. It is the case of the respondents that the said auto-rickshaw was driven rashly and negligently by the driver, namely, respondent No.2. It was alleged that the said auto-rickshaw was turned turtle with the result the respondent No.1 sustained injuries on small finger and right thumb. The respondent No.1 was admitted in the Civil Hospital, at Mehsana. The respondent No.1 had also

taken treatment of Dr. D.K.Shah, Orthopaedic Surgeon at Himmatnagar. It is the case of the respondent No.1 that, because of the injuries at his right thumb, he had suffered permanent disability and is not able to carry out his normal work. The respondent No.1, therefore, filed M.A.C.P. No.1120 of 1989 claiming compensation of Rs.25,000/- from the Insurance Company and the driver-cum-owner of the said autorickshaw. Jenabbibi Ahmadbhai Pothigara (respondent No.1 in Civil Revision Application) also filed M.A.C.P. No.1121 of 1989 claiming compensation of Rs.9999/- from the Insurance Company and the driver-cum-owner of the said autorickshaw. Both the claim petitions were consolidated and heard by the Tribunal. No written statement was filed by the driver-cum-owner of the said autorickshaw. The Insurance Company, by filing its written statement, at Exh.17, inter alia, contended that the respondent No.1 had not sustained injuries in the vehicular accident but had sustained the injuries at his residence while he was closing the gate of his house. It was contended that the father of the respondent No.1 had written a letter to the Insurance Company disclosing that the respondent No.1 had sustained fracture of right little finger in his house while he was trying to close the iron door.

5. The Tribunal has framed issues at Exh.15. On behalf of the respondent No.1, the respondent No.1 himself examined at Exh.19. The respondent No.1 had produced documentary evidence such as First Information Report lodged by him against the rickshaw driver at Exh.20, panchanama of place of accident at Exh.21, certificate of the Civil Hospital, Mehsana, at Exh.22, disability certificate of Dr. A.G. Memon at Exh.23, X-ray plates at Exh.24, injury certificate of Civil Hospital, Mehsana, at Exh.24/A. On behalf of the opponents, rickshaw driver was examined at Exh.34. The letter written by the respondent No.2 to the Divisional manager, the New India Assurance Company Limited, was produced at Exh.28, and the letter written by the father of the respondent No.1 to the Insurance Company was produced at Exh.35.

6. On appreciation of oral as well documentary evidence, the Tribunal held that the accident had taken place due to rash and negligent driving by the respondent No.2 in driving the auto-rickshaw bearing No.GRN 1879, and that the respondent No.1 had sustained injuries at his right thumb and little finger in the vehicular accident on December 31, 1988. Therefore, the Tribunal has awarded Rs.20,000/- to Ahemadbhai Abdulrahemanbhai Pothigara (respondent No.1 in First appeal No.4145 of

2001) and Rs.1,200/- to Jenabbibi Ahmadbhai Pothigara (respondent No.1 in Civil Revision Application No.274 of 2003) as compensation along with interest at the rate of 9% from the date of filing of the Claim Petitions till realisation and proportionate costs, which has given rise to filing of the First Appeal as well as the Civil Revision Application by the Insurance Company.

7. Mr.Sandip C. Shah, learned advocate appearing for the Insurance Company, has vehemently submitted that the respondent No.1 has not sustained injuries in the vehicular accident, but had sustained injuries prior to the accident while he was closing the iron gate of his house. The learned advocate, in support of the above submission, has placed reliance on the letter written by the respondent No.2, owner-cum-driver of the auto-rickshaw, and the letter written by the father of the respondent No.1 to the Insurance Company. In both these letters, it was stated that the respondent No.1 had sustained injuries at his house and not in the vehicular accident. The learned advocate has also in support of his submission placed reliance on the oral testimony of the respondent No.2, owner-cum-driver of the auto-rickshaw.

8. It be stated that the the respondent No.2, owner-cum-driver of the auto-rickshaw, is the brother in law of the respondent No.1. The letter Exh.25 alleged to have been written by the father of the applicant was addressed to the Insurance Company at the instance of the respondent No.2, owner-cum-driver of the auto-rickshaw. Reading the letter at Exh.35, in my view, the said letter was got prepared by some other person because, in the said letter, it was stated twice that the said letter was written at the free will of the writer and no pressure was exerted on him at the time of writing the letter. In my view, both the letters at Exh.28 and Exh.35 had been written by the relatives of the respondent No.1 to deprive the respondent No.1 of his legal right to get compensation for the injuries sustained by him in the vehicular accident. The documentary evidence produced by the respondent No.1 in the nature of First Information Report at Exh.20, panchanama of place of accident at Exh.1, medical certificates of the Civil Hospital, Himmatnagar and Civil Hospital, Mehsana, and X-ray plates had proved that respondent No.1 had sustained injuries on right thumb and little finger in the vehicular accident which took place on December 31, 1988, due to rash and negligent driving of the auto-rickshaw by the respondent No.2. The Tribunal has considered documentary as well as oral evidence adduced by the Insurance Company and the

respondent No.1 in its right perspective, and has rightly rejected the plea of the Insurance Company that the respondent No.1 had not sustained injuries in the vehicular accident, but had sustained injuries at his residence. Taking into consideration the documentary and oral evidence produced before the Tribunal, in my view, the respondent No.1 had proved to the satisfaction of the Tribunal and to the satisfaction of this Court that he had sustained injuries in the vehicular accident on December 31, 1988 due to rash and negligent driving of the rickshaw by the respondent No.2. Admittedly, the said rickshaw was insured with the appellant, the New India Assurance Company Limited, and, therefore, the Tribunal has committed no error in passing the award against the appellant and the respondent No.2, who is owner-cum-driver of the said rickshaw.

9. It be further stated that the amount awarded to to Ahemadbhai Abdulrahemanbhai Pothigara (respondent No.1 in First appeal No.4145 of 2001) under various heads, quite just, proper and reasonable and cannot be said to be excessive or on the higher side. First Appeal No.4145 of 2001 is, therefore, required to be dismissed.

10. Similarly, the amount of Rs.1,200/- to Jenabbibi Ahmadbhai Pothigara (respondent No.1 in Civil Revision Application No.274 of 2003) under various heads, is quite just, proper and reasonable and cannot be said to be excessive or on the higher side. Civil Application No.10095 of 2001 is, therefore, required to be dismissed.

11. Since the First Appeal No.4145 of 2001 is dismissed, the Civil Application No.10095 of 2001 for stay is also required to be dismissed and the interim relief is required to be vacated.

12. As a result of foregoing discussion,

(i) First appeal No.4145 of 2001 fails and is hereby dismissed with no order as to costs.

(ii) Civil Application No.10095 of 2001 is dismissed. Rule is discharged with no order as to costs. The interim relief granted earlier stands vacated.

(iii) Civil Revision Application is dismissed. Rule is discharged with no order as to costs.

(iv) The common judgment and order dated April 10, 2001, passed by the Motor Accidents Claims Tribunal (Aux.), Mehsana, in M.A.C.P. Nos.1120 of 1989 and

1121 of 1989, is hereby confirmed.

(v) The amount of Rs.10,000/- deposited by the Insurance Company at the time of filing of the appeal is ordered to be transmitted to the Tribunal, forthwith.

(M.H. Kadri, J.)

(swamy)